

RAS 3833

RELATED CORRESPONDENCE

DOCKETED 01/29/02

January 28, 2002

Brent R. Marquand, Esq.
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37902-1401

SUBJECT: IN THE MATTER OF TENNESSEE VALLEY AUTHORITY (WATTS BAR
NUCLEAR PLANT, UNIT 1; SEQUOYAH NUCLEAR PLANT, UNITS 1 & 2;
BROWNS FERRY NUCLEAR PLANT, UNITS 1, 2 & 3)

Dear Mr. Marquand:

I am writing in response to your letter dated January 24, 2002, in which you requested additional information related to the Staff's responses to the Tennessee Valley Authority's (TVA) Request for Admissions and Interrogatory. You requested a response by January 25, 2002, one day after your letter. The Staff notes that NRC regulations at 10 C.F.R. § 2.742(b) provide the Staff with 10 days to respond to this request. TVA cannot unilaterally alter that requirement. Per our conversation on January 24, 2002, the Staff is voluntarily providing a response prior to the 10 day limit. The Staff maintains that its responses to TVA's request for admissions are adequate. However, the Staff is providing supplemental responses as requested.

Additionally, your letter requested a response to the Interrogatory attached to TVA's Request for Admissions. The Staff believes that its responses to TVA's request for admissions provided appropriate responses to the interrogatory. However, the Staff has reviewed its January 22, 2002 responses to those requests and is voluntarily providing additional information.

Sincerely,

/RA/

Jennifer M. Euchner
Counsel for NRC Staff

January 28, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
	)	Docket Nos. 50-390-CivP; 50-327-CivP
TENNESSEE VALLEY AUTHORITY	)	50-328-CivP; 50-259-CivP
(Watts Bar Nuclear Plant, Unit 1	)	50-260-CivP; 50-296-CivP
Sequoyah Nuclear Plant, Units 1 & 2	)	50-260-CivP; 50-296-CivP
Browns Ferry Nuclear Plant, Units 1,2 &3))	
	)	ASLBP No. 01-791-01-CivP
)	
	)	EA 99-234

NRC STAFF SUPPLEMENTAL RESPONSE TO TENNESSEE VALLEY AUTHORITY'S
REQUEST FOR ADMISSIONS AND INTERROGATORY

Pursuant to 10 C.F.R. § 2.742, the Nuclear Regulatory Commission (NRC) Staff hereby responds to the Tennessee Valley Authority's (TVA) request for admissions and interrogatory.

6. The Staff neither admits nor denies that the employees selected for employment were selected for "new" positions created as a result of the reorganizations or that they lost "old" positions because the Staff has not examined the position descriptions and organizational charts for each of the various reorganizations undertaken by TVA from 1994 to 1997. Moreover, given TVA's position on McArthur's various jobs, it is far from apparent as to how TVA would define what constitutes a "new" position versus an "old" position.

7. The Staff denies that Fiser served as Chemistry Superintendent at Sequoyah Nuclear Plant from 1988 to 1992 because Fiser's position was not Chemistry Superintendent throughout that time period and because Fiser served as Outage Manager during some portion of that time period. The Staff denies that in 1992, Fiser's Chemistry Superintendent position was classified to TVA's PG schedule as a grade 9 because Fiser's position in 1992 was not Chemistry Superintendent, it was Chemistry and Environmental Superintendent.

8. The Staff denies that as a result of weaknesses, Sequoyah plant management proposed that Fiser be temporarily assigned to the Corporate Chemistry organization and that the Corporate Chemistry Manager be temporarily assigned to act as the Sequoyah Chemistry Superintendent because the deposition testimony given by Charles Kent, Wilson McArthur, and Gary Fiser are in conflict with regard to this issue.

9. The Staff denies that Fiser was removed from the position of Sequoyah Chemistry Manager because he was not successfully managing that organization because the deposition testimony given by Charles Kent, Wilson McArthur, and Gary Fiser are in conflict with regard to this issue. The Staff denies that Fiser's September 1989 employee appraisal continued to reflect the same problems because the appraisal notes that Fiser's performance improved during the relevant time frame.

10. The Staff denies that Fiser had weak performance evaluations and that the Chemistry Program was under Fiser's management during the entirety of 1991 and 1992 because Fiser served as an Outage Manager in 1991 and then was rotated to Corporate Chemistry in 1992. Additionally, the Staff would not characterize Fiser's performance evaluations as "weak."

12. The Staff denies that Fiser's performance as Chemistry Manager was criticized a number of times, contrary to the implication in his 1996 ERA complaint because the Staff does not conclude that Fiser's performance appraisals are weak or unfavorable.

13. The Staff denies that the decision to remove Fiser from the Sequoyah Chemistry Superintendent position was made by Sequoyah plant management because deposition testimony given by Charles Kent, Wilson McArthur, and Gary Fiser are in conflict with regard to this issue.

14. The Staff denies that Fiser suggests that he was removed because his organization had discontinued providing certain chemistry data to the plant and, in January 1992, he refused to agree with the NSRB's suggestion to resume providing that information because this request conflicts with Gary Fiser's deposition testimony. The Staff denies that Fiser was rotated from the

Sequoyah Site Chemistry Manager position to the Corporate Chemistry Manager position because of his weak management skills because deposition testimony given by Charles Kent, Wilson McArthur, and Gary Fiser are in conflict with regard to this issue.

15. The Staff denies that the minutes of the NSRB's May 21-22, 1992 meeting show that Fiser was replaced as the Sequoyah Chemistry Manager because of the problems in his organization which needed to be corrected because the minutes do not make such a statement.

17. The Staff denies that this action was taken because Fiser's management perceived that he was having difficulties managing the Corporate Chemistry organization because the deposition testimony given by Wilson McArthur conflicts with the deposition testimony given by Gary Fiser and the conversations recorded by Fiser.

21. The Staff admits that the copy of Gary Fiser's personnel file provided by TVA during discovery does not contain a position description reflecting his assignment to Corporate Chemistry. The Staff neither admits nor denies that the copy of Fiser's personnel file is either complete or accurate. The Staff denies that Fiser's official position description of record continued to be as the Sequoyah Chemistry Superintendent because the Staff denies that there is any such thing as an "official position description of record."

22. The Staff admits that the Chemistry Manager position at Sequoyah was upgraded to a PG-10 position. The Staff denies that the position had greater responsibilities and accountabilities than Fiser's Chemistry Superintendent position because the deposition testimony of Charles Kent is not consistent with his prior statements about the position, specifically his January 11, 1994 Record of Interview with the TVA Office of Inspector General (TVA OIG).

23. The Staff denies that Fiser received the RIF notice because his official position description of record was still as Sequoyah Chemistry Superintendent and that position was eliminated in the 1993 reorganization because that position was not ultimately eliminated in the

reorganization and because there is testimony that individuals at Corporate, including Ben Easley, were instructed to carry out the RIF.

26. The Staff did not make a statement that it “neither admits nor denies” in response to this request for admission. Therefore, the Staff is not providing a supplemental response to this request.

28. The Staff neither admits nor denies that the settlement agreement did not require Fiser to remain in that position nor preclude him from applying for or accepting other TVA positions because the Staff is not making any contention regarding the interpretation of the settlement agreement. The Staff neither admits nor denies that the agreement did not guarantee the continued existence of the Chemistry Program Manager position, did not guarantee Fiser continued employment, and did not guarantee that his position would never be subject to a reorganization because the Staff is not making any contention regarding the interpretation of the settlement agreement.

31. The Staff did not make a statement that it “neither admits nor denies” in response to this request for admission. Therefore, the Staff is not providing a supplemental response to this request.

34. The Staff denies that the Chemistry and Environmental Protection Program Manager positions were significantly different from the previous Chemistry Program Manager positions which were being eliminated because the testimony by Fiser, Grover, Kent, Corey, and Cox all indicated that the Chemistry and Environmental Protection Program Managers did very little environmental work and that approximately 95 percent of their work was chemistry related. The Staff denies that the incumbents of the positions being eliminated were not entitled to rollover into the new positions by virtue of Federal regulations because the Staff contends that the positions were sufficiently similar so as to permit rollover.

37. The Staff denies that the final decisions on the budget and staffing were made by their superiors because the deposition testimony given by Tom McGrath, Phil Reynolds, and Ed Boyles are in conflict with regard to this issue. The Staff denies that McGrath requested that the Radiological Control and Chemistry Services organizations be combined under the existing but then vacant RadChem Manager position, thereby eliminating one level of management because the deposition testimony and prior statement by Tom McGrath, Wilson McArthur, and Ron Grover are in conflict with regard to this issue.

38. The Staff denies that McArthur was “acting” as the Manager of Radiological Control because the deposition testimony of McArthur, Boyles and Reynolds, as well as the personnel file for McArthur provided by TVA all demonstrate that McArthur was the Radiological Control Manager, not that he was “acting” Radiological Control Manager. The Staff denies that Grover, Manager of Corporate Chemistry and Environment, and McArthur proposed an organizational structure that included combining their two staffs under one manager because the deposition testimony and prior statement by Tom McGrath, Wilson McArthur, and Ron Grover are in conflict with regard to this issue.

39. The Staff denies that Human Resources (HR) determined that the new position was sufficiently similar to McArthur’s most recent position description of record that he was entitled to the position in accordance with TVA’s interpretation of OPM regulations because the Staff denies that there is such a thing as a “position description of record” and because TVA did not provide this explanation for the transfer of McArthur into the RadChem Manager position until the 1999 enforcement conferences. Prior to those conferences, TVA’s explanation for the transfer of McArthur was that he had held the position before, and therefore he was entitled to transfer into the position in 1996. Moreover, McArthur testified that he wrote the 1996 position description after he was placed in the job, thus making a comparison of this position prior to that time highly suspect.

40. The Staff denies that TVA management, at the recommendation of HR, decided to post announcements for the positions and to allow employees to apply and compete for the jobs because the deposition testimony and prior statements of Tom McGrath, Ed Boyles, Ben Easley, and Phil Reynolds are in conflict with regard to who made the decision that the positions should be posted.

43. The Staff denies that the copy of BP-102 furnished by TVA during discovery provides generally for a selection review board to make a recommendation after conducting structured job related interviews of qualified applicants because BP-102 is silent as to who should conduct the interviews and never mentions the use of a selection review board.

46. The Staff denies that the selection review board was “neutral” because it did not have Jack Cox as a member, it included Charles Kent, who had recently made an attempt to have Sam Harvey, one of the applications, transferred to his site, and Kent mentioned Fiser’s protected activity to the selecting official, McArthur, and in front of Corey just prior to the interviews. The Staff denies that the selection review board that recommended candidates for the PWR Chemistry Program Manager position was free of any animosity towards Fiser and that the board, not McGrath or McArthur, determined that complainant was not one of the two top-ranked candidates because testimony by Fiser and Grover indicated that the interview questions, which were drafted by McArthur (with one question drafted by Kent), were slanted in favor of Harvey’s experience and against Fiser’s experience.

49. The Staff denies that McGrath consulted with HR, which informed him that Harvey could not be transferred consistent with TVA’s interpretation of OPM’s regulations because the deposition testimony given by Ed Boyles, Ben Easley, and Tom McGrath are in conflict with regard to this issue. The Staff denies that Sequoyah management was informed that if the site had a vacancy, it could be advertised and filled through the competitive process because the deposition

testimony given by Charles Kent, Ed Boyles, Ben Easley, and Tom McGrath are in conflict with regard to this issue.

51. The Staff denies that Fiser had a conversation with Harvey after that meeting in which Fiser "blew up" at Harvey and accused him of being preselected and having been guaranteed the PWR Chemistry Program Manager job because the deposition testimony of Gary Fiser and Sam Harvey are in conflict with regard to this issue. The Staff denies that Harvey told Fiser that he had not been preselected and that he had to apply for the position just like anybody else and that Fiser had written the job description with himself in mind by specifying the duties he had been performing because the deposition testimony of Gary Fiser and Sam Harvey are in conflict with regard to this issue. The Staff denies that Fiser said that he felt that someone was out to get him, but that "he knew how the system worked and he was going to take advantage of it" because the deposition testimony of Gary Fiser and Sam Harvey are in conflict with regard to this issue.

Respectfully submitted,

/RA/

Jennifer M. Euchner
Counsel for NRC Staff

Dated at Rockville, Maryland
this 28th day of January, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
	)	Docket Nos. 50-390-CivP; 50-327-CivP;
TENNESSEE VALLEY AUTHORITY	)	50-328-CivP; 50-259-CivP;
	)	50-260-CivP; 50-296-CivP
(Watts Bar Nuclear Plant, Unit 1;)	
Sequoyah Nuclear Plant, Units 1 & 2	)	ASLBP No. 01-791-01-CivP
Browns Ferry Nuclear Plant, Units 1, 2, 3))	
	)	EA 99-234

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF SUPPLEMENTAL RESPONSE TO TENNESSEE VALLEY AUTHORITY'S REQUEST FOR ADMISSIONS AND INTERROGATORY" in the above-captioned proceeding have been served on the following by deposit in the United States mail; through deposit in the Nuclear Regulatory Commission's internal system as indicated by an asterisk (*), or by electronic mail as indicated by a double asterisk (**) on this 28th day of January, 2002.

Administrative Judge **
Charles Bechhoefer, Chairman
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Administrative Judge **
Ann Marshall Young
Atomic Safety and Licensing Board
U.S. Nuclear Regulatory Commission
Mail Stop: T-3F23
Washington, D.C. 20555

Thomas F. Fine **
Brent R. Marquand **
John E. Slater **
Barbara S. Maxwell **
Tennessee Valley Authority
400 West Summit Hill Drive
Knoxville, Tennessee 37901-1401

Administrative Judge **
Richard F. Cole
U.S. Nuclear Regulatory Commission
Atomic Safety and Licensing Board Panel
Mail Stop: T-3F23
Washington, D.C. 20555

Office of the Secretary *
ATTN: Rulemaking and Adjudications Staff
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555

Office of Commission Appellate Adjudication
U.S. Nuclear Regulatory Commission
Mail Stop: O-16C1
Washington, D.C. 20555

David Repka
Winston & Strawn
1400 L Street, N.W.
Washington, D.C. 20005

/RA/

Jennifer M. Euchner
Counsel for NRC Staff